APPENDIX
No. 1

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

CONFIDENTIAL

No. 351 American Embassy, Montevideo, Uruguay.
July 22, 1949.

Subject: Progress in Negotiations of Treaty of Friendship, Commerce, and Economic Development between the United States and Uruguay.

The Honorable
The Secretary of State,
Washington.

Sir:

I have the honor to refer to the Embassy's confidential telegram no. 209 of June 16 and the Department's confidential telegram no. 152 of June 29 concerning the negotiation of a Treaty of Friendship, Commerce and Navigation between the United States and Uruguay, and specifically concerning points raised by the Uruguayan Bank of the Republic. Reference is also made to this Embassy's confidential telegram no. 266 of July 21 on the same subject.

Sr. Ariosto GONZALEZ, the Uruguayan negotiator, returned to Montevideo this week and negotiations were resumed on Wednesday, July 20. González showed the Embassy's representative the formal comment of the Bank of the Republic on the latest Spanish draft of the Treaty, (a copy of which comment is enclosed) and expressed concern over the Bank's note, especially over the contents of paragraph four, page one. He then suggested the possibility of a confidential exchange of notes at the time or signing of the Treaty (rather than a

modification of the Additional Protocol, as the Bank had suggested), which would establish the fact that during the course of the negotiations the rig t of Uruguay was recognized to apply restrictions, by currencies, on imports, exports and capital transfers so long as Uruguay had favorable balances of inconvertible currencies and so long as there was no return to multilateral trade.

The Embassy's representative then proposed that the changes in Article XVI (2) and (4) and the omission of Article XIX (1) (E), as contained in the Department's telegram no. 152, be considered prior to considering the possibility of any further exchange of notes or revision of the Additional Protocol. González approved the suggested revisions but expressed some doubt as to whether they would be sufficient to satisfy the Bank. He agreed, however, to present the revised articles to the Bank, although he requested that the Department consider the possibility of an exchange of confidential names as mentioned above, in the eventuality that the Bank might continue to object to the financial provisions of the Treaty.

González emphasised that for political reasons and in order to afford reasonable assurances of the approval of the Treaty by the Uruguayan Congress, the approval of the Treaty by the Bank was vital. Anticipating possible continued objections of the Bank, he suggested one other possibility, in case the Department should not approve the idea of an exchange of confidential notes. This was to the effect that at the time of the signing the Treaty, the Uruguayan Government might present a note to the

Embassy requesting that the right of Uruguay to apply discriminatory measures on the basis of currencies in the issuance of import licenses and in permitting capital transfers so long as she held favorable balances of inconvertible currencies and so long as there was no return to multilateral trade, be clarified. He suggested that the Embassy might reply, stating that such a clarification was not necessary since the terms of the Treaty established this point, in accordance with the rights and obligations reserved to Uruguay under the Articles of Agreement of the International Monetary Fund.

González proposes to present to the Bank without delay the revisions of Article XVI proposed by the Department, and the suggested omission of Article XIX (1) (E). These will be presented under cover of an note in which González proposes to point out: (1) that the provisions of the Treaty, including the proposed revisions of Articles XVI and XIX, do not imply any immediate obligation on the part of Uruguay to change existing regulations and controls on exports, imports and capital transfers; (2) that the Additional Protocol clearly establishes Uruguay's right to apply quantitative restrictions on imports and exports in keeping with the provisions of Article XIV (2) of the International Monetary Fund Agreement.

The Embassy's representative, in discussing with González objections noted in the Bank's note of June 20, expressed some surprise that the Bank would raise objections to terms of the Treaty based on regulations set up in the International Monetary Fund Agreement (see paragraph four, page two of enclosed

note from Bank), since the Uruguayan Government had subscribed to the Agreement. González agreed and stated that he would call attention to this point in his covering note to the Bank. He also stated that he would talk personally to the Uruguayan President; to Sr. SILVEIRA Zorzi, the General Manager of the Bank; and to Sr. Rotkohi, the Manager of the Foreign Trade Department of the Bank, in an effort to obtain the approval of the Bank without delay.

Further progress in the negotiations of the Treaty is largely dependent upon the Bank's examination of the proposed revisions of Article XVI and XIX and its reaction to the proposals.

With reference to Embassy Despatch no. 222 of May 12 and the Department's confidential telegram no. 132 of June 2, the following points have been agreed upon. The Department's revision of Article II was adopted by González. In Article VI (1) (a), "the practice of law" has been eliminated, as reflected in the latest Spanish text of the Treaty, sent to the Department under cover of Despatch no. 225 of May 16. In Article XII (2), the changes noted in the Department's telegram no. 132 have been accepted. In Article XIIX (2) the final sentence has been deleted and this deletion is reflected in the latest Spanish text, now in possession of the Department.

In regard to Article XX (3) (Spanish text), González proposed to replace the period at the end of the paragraph by a comma and continue

> "debiendo sujetarse a las prescripciones establenidas por las leyes de la Parte en cuyos territorios intenten realizar el

> ejercicio habitual de actos comprendidos en el objeto de an institucion."

The English text of Article XX (3) might be extended by replacing the period at the end of the paragraph by a comma, and continuing

> "but shall be obliged to comply with regulations established by the laws of the Party in whose territories they propose to carry on regularly the activities for which they are organized."

González pointed out that companies of the United States as defined in Article XX (3) of the Treaty will, upon the signing of the Treaty, enjoy privileges accorded other foreign companies by the Treaty of International Commercial Law signed by Uruguay, Argentina, Bolivia, Brazil, Chile, Paraguay and Perú on February 13, 1889, and the Treaty of International Law of Terrestrial Commerce signed by Uruguay, Brazil, Colombia, Bolivia, Argentina and Chile on March 19, 1940. Provisions of these treaties establish, in González's opinion, the right of companies organized and with recognized juridical status in signatory countries, or in other countries enjoying the privileges accorded in the treaties, to have their juridical status recognized in other signatory countries, to enjoy civil rights in such other signatory countries, and to appeal to or defend themselves before the courts of such countries. Such companies may even carry on isolated commercial operations, provided such operations do not constitute "the regular exercise of the operations for which the company was organized". In other words, such companies are

obliged to comply with the Uruguayan legal regulations governing organization of companies, activities, etc. only when they plan actively to conduct business, commerce, or other normal transactions in Uruguay in a regular and continued manner.

González called attention to the fact that his suggested addition to Article XX (3) follows as nearly as possible the wording of Title II, Article 8 of the Treaty of March 19, 1940.

Pages 407-416, inclusive, and pages 661-672, inclusive, of the "Colección de Tratados, Convenciones, y Acuerdos Económico-Comerciales", vol. I, published by the Ministry of Foreign Relations are enclosed. These pages contain the full text of the two commercial treaties referred to above.

Title II, Articles 4, 5, 6, and 7 of the Treaty of February 13, 1889 and Title II, Articles 6, 7, 8, 9, 10 and 11 of the Treaty of March 19, 1940, which González noted are applicable to the points covered in Article XX (3) of the proposed Treaty between Uruguay and the United States, follow.

"TITULO II
De las sociedades

Artículo 4°. El contrato social se rige, tanto en su forma como respecto a las relaciones jurídices entre los socios, y entre la sociedad y los terceros, por la ley del país en que ésta tiene su domicilio comercial.

Art. 5°. Las sociedades o asociaciones que tengan carácter de persona jurídica se regirán por las leyes del país de su domicilio; serán reconocidas de pleno derecho como

tales en los Estacos, y hábiles para ejercitar en ellos derenchos civiles y gestionar su reconocimiento ante los Tribunales.

Mas para el ejarcicio de actos comprendom dos en el objectô de su institución, su dujetan . . a las prescripciones establecioas en el estano en el cual intenten realizerlos.

Art. 6°. Las sucursales o agencias constituídas en un Estado por una sociedad radicada en otro, se considerarán comiciliadas en el lugar en que funcionan y sujetas a la jurisdicción de las autoridades locales, en lo concerniante a las operaciones que practiquen.

Art. 7°. Los Jueces del país en que la sociedad tiene su domicilio legal, son competentes para conocer de los litigios que surjan enbre los socios o que inicien los terceros contra la sociedad.

Sin embargo, si una sociedad domiciliada en un Estado realiza operaciones en otro, que den mérito a controversias judiciales, podrá ser demandada ante los Tribunales del último.

TITULO II

De las sociedades

Artículo 6°. La ley del domicilio comerciel rige la calidad del documento que requiere el contrato de sociedad.

Los requisitos de forma del contrato se rigen por la ley del lugar de su celebración.

Las formas de publicidad queden sujetas a lo que determine cada Estado.

Art. 7°. El contenido del contrato social; las relaciones jurídicas entre los social; entre estos y la sociedad; y entre le

misma y terceros, se rigen por la lay del Estado en donde la sociedad tiene domicilio comercial.

Art. 8°. Las sociedades mercantiles se regirán por las leyes del Estado de su domicilio comercial; serán reconocidas de pleno derecio en los otros Estados contratantes y se reputarán hábiles para ejercer actos de comercio y comparcer en juicio.

Mas, para el ejercicio habitual de los actos comprendidos en el objeto de su institución, se ejecutarán a las prescripciones establecidas por las leyes del Estado en el cual intenten realizarlos.

Los representantes de dichas sociedades contraen para con terceros las mismas responsabilidades que los administradores de las sociedades locales.

Art. 9°. Las sociedades o corporaciones constituidas en un Estadeo bajo una especie desconocide por las leyes de otro, pueden ejercer en este último actos de comercio, ragatendose a las prescripciones locales.

Art. 10°. Las condiciones legales de emisión o de negociación de acciones o titulos de obligaciones de las sociedades comerciales, se rigen por la ley del Estado en donde esas emisiones o negociaciones se lleven a efecto.

Art. 11°. Los jueces del Estado en donde la sociedad tiene su domicilio, son competentes para conocer de los litigios que surjan entre los socios en su carácter de tales, o que inicien los terceros contra la sociedad.

Sin embargo, si una sociedad domiciliada en un Estado realiza en otro operaciones que den mérito a controversias judiciales, podrá ser demandada ante los jueces o tribunales del segundo."

It is the embassy's opinion that Article XX (3) with the addition proposed by Gonzáles guaranteed to companies organized and with recognized juridical status in the United States, those rights and privileges sought by the inclusion of this section in the Treaty; viz., the right to appeal to, to be heard by, and to defend themselves before the courts and administrative tribunels and agencies of Uruguay; to enjoy recognized civil rights in general; and to be required to comply with legal regulations only when they carry on their regular business or other activities in Uruguay.

If this amendment to Article XX (3) is acceptable to the Department, it is believed that the only serious obstacle remaining to the acceptance of the Treaty in its present form is the opinion of the Bank of the Republic concerning restrictions on financial transactions as now covered by the Treaty.

Respectfully yours,
For the Ambassador:

L. O. Sanderhoff
Second Secretary

Enclosures:

1. Comment from Bank of the Republic on Treaty, dated June 20, 1949.

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2. Tratado de Derecho Comercial Internacional, Febrero 13, 1889.
3. Tratado de Derecho Comercial Terrestre Internacional, Marzo 19 de 1940.

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APPENDIX
No. 2

OUTGOING TELEGRAM

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URUG interpretation ART XX(3) Treaty appears very close to that of DEPT (EMBDES 351, JULY 22), but proposed additional language seems unnecessarily broad and might be susceptible of construction that would restrict rights set forth elsewhere in Treaty.

VERBATIM TEXT: EMB requested propose that in place of additional clause FOL sentence be added: QTE It is understood that recognition of juridical status does not of itself confer rights upon a company to engage in the activities for which it was organized UNQTE

ACHESON

ITP:CP:VGSetser:met

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OUTGOING TELEGRAM

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Since paragraph provides only for recognition of juridical rights, the understanding should be related only to that recognition and not to the general meaning or extent of rights of juridical persons. If Urug insists, however, language quoted Urdes 515 acceptable.

Changes Protocol (6) and add para Protocol satisfactory, also proposed changes Spanish translation.

ACHESON

ITP:CP:VGSetser:lgm

10-25-49 RPA OFD L/T L/E

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APPENDIX
No. 3

OUTGOING TELEGRAM

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AMEMBASSY,

MONTEVIDEO.

FCN Treaty. Art IX(2). Substance of change unobjectionable but phrase QUOTE Each Party UNQUOTE is ambiguous. Propose QUOTE made in accordance with the applicable laws, which shall at least assure UNQUOTE. If this is unacceptable, propose QUOTE made in accordance with the laws of the Party within whose territories the property is located UNQUOTE. Quoted Spanish not in accord previous agreed translation. Emb pls check. Emb requested make strong effort add following sentence: QUOTE Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof UNQUOTE. (Dept A-231 at 17) Final clause recognizes advanced character Urug law. Urdes 515 Oct 14.

Art XIII(2). Change unobjectionable.

Art XX(3). Change acceptable as to second sentence. Final sentence should read QUOTE It is understood that the recognition of such rights does not of itself confer rights upon a company to engage regularly in the business activities for which it was organized. UNQUOTE Since paragraph provides only for recognition of juridical rights, the understanding should be related only to that recognition and not to the general meaning

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